

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 98-0590  
GROSS INCOME TAX  
For Years 1994 and 1995**

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**ISSUES**

**I. Gross Income Tax –Freight Allowance**

**Authority:** 45 IAC 1-1-33; IC § 6-8.1-5-4

Taxpayer protests the addition of delivery charges to its gross income.

**II. Gross Income Tax –Freight Allowance**

Taxpayer requests an adjustment to its sales factor based on addition of delivery charges to its gross income.

**III. Gross Income Tax –Deduction for Income Taxes**

Taxpayer requests an adjustment to its gross income for other income taxes paid by taxpayer.

**STATEMENT OF FACTS**

Taxpayer operation at issue involves various sand and gravel sites in Indiana selling and arranging delivery of materials to customers. As part of an audit, the auditor was given several different answers to the same question regarding delivery charges for the materials, and concluded the charges were borne by the taxpayer and this income was attributable to the taxpayer's operations. Taxpayer maintains the materials were shipped Free on Board and that the delivery income was not attributable to the taxpayer's operation.

**I. Gross Income Tax –Freight Allowance**

**DISCUSSION**

The overlying issue for the taxpayer's protest is the audit's assessment of tax based on statements by taxpayer's staff and inferences drawn from the documentation available to the auditor. Auditor made adjustments based on discrepancies in the amounts reported on the taxpayer's ST-103's, and the amounts on the taxpayer's gross income return for the year.

Taxpayer contends that the inferences resulting in assessment were not properly drawn; inasmuch as the ST-103's included amounts for the accrued haul charges, representing charges for freight that are arranged by the taxpayer on behalf of the purchaser and which were reimbursed by the purchaser. Taxpayer alleges that the selling terms of taxpayer's aggregate products is that the purchaser takes title to the aggregate materials at the sales location and that the shipping terms are Free on Board at the point of origin. Taxpayer then maintains 45 IAC 1-1-33 exempts a seller's reimbursement for buyer's shipping expenses from gross income tax and consequently this adjustment was incorrect. This provision states in relevant part:

If freight is at the purchaser's expense and it is advanced on his behalf by the seller, the seller's reimbursement for such expense by the buyer is not subject to gross income tax. If there is an F.O.B. point mentioned in the contract and it is at the origin of shipment, this indicates that any further expense of delivery is an expense of the purchaser....The terms "freight paid" and "freight prepaid" disclose the payment of freight by the seller which, dependent on the stated delivery terms, may or may not be the seller's expense. The term "freight collect" discloses the payment of freight by the purchaser which also, dependent upon the stated delivery terms, may or may not be the purchaser's expense.

The exemption which is granted by this regulation is dependent on sufficient and specific documentation to confirm the structure of the transaction. Thus, this issue revolves around the burden of proof in an audit situation, which IC § 6-8.1-5-4 defines as:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include *all source documents necessary to determine the tax*, including invoices, register tapes, receipts, and canceled checks. (*Emphasis added*)

Taxpayer admits the auditor received conflicting statements at the time of the audit. Furthermore, the record does not demonstrate any contemporaneous documentation supporting taxpayer's position either made available to the auditor or presented at the hearing. Taxpayer did present a current invoice demonstrating that all shipments are presently free on board at the origin and the charges are borne by the customer, not the taxpayer. Taxpayer has not provided information that overrides the initial adjustment, which was based on taxpayer's contemporaneous filings, statements by taxpayer's staff, and contemporaneous documentation available to the auditor.

### **FINDINGS**

Taxpayer's protest is denied.

## **II. Gross Income Tax –Freight Allowance**

### **DISCUSSION**

Taxpayer requests that if the Department determines that the shipments were FOB, they not be added to the numerator of the taxpayer's sales factor. Taxpayer concurs that the resolution of the preceding issue is dispositive of this issue. Taxpayer also requests that if the Department does include the freight charges in the numerator of the sales factor, they should be included in the denominator as well, to correctly reflect the apportionment proportions.

### **FINDINGS**

Taxpayer's protest is denied as to the removal of the charges from the sales factor numerator and sustained as to the inclusion of the freight charges in the denominator.

## **III. Gross Income Tax –Deduction for Income Taxes**

### **DISCUSSION**

The auditor added back to income an item described as "other taxes" on the basis that the taxpayer did not provide any details and therefore the amount deducted was assumed to be income taxes. Taxpayer has now provided details related to these other taxes, and to the extent that they establish these taxes as income taxes, taxpayer protest is sustained.

### **FINDINGS**

Taxpayer's protest is sustained pending audit verification.